

NEBRASKA COMMISSION ON UNAUTHORIZED PRACTICE OF LAW

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ADMINISTRATIVE RULES, REGULATIONS, AND PROCEDURES

- I. Purpose and Authority.** These rules, regulations, and procedures are created by the Commission on Unauthorized Practice of Law (Commission) pursuant to Neb. Ct. R. §§ 3-1001 through 3-1021, the Nebraska Supreme Court rules governing the Unauthorized Practice of Law, as adopted October 10, 2007 (Court Rules). The Court Rules, and any amendments, provide the framework for the Commission to carry out its purpose and exercise its powers. Neb. Ct. R., ch. 3, art. 10, Statement of Intent; Neb. Ct. R. § 3-1010.
- II. Membership.**
 - a. Attorney Members.** Attorney members of the Commission shall be appointed by the Supreme Court after receiving nominations from the Executive Council of the Nebraska State Bar Association (NSBA). These nominations shall be for one attorney member from each of the six Supreme Court Districts in the state. Neb. Ct. R. § 3-1011(A)(1).
 - b. Initial Terms.** With the first set of nominations for attorney members, the NSBA Executive Council shall also recommend the expiration of each member's term according to the staggered term requirement in the Court Rules. Neb. Ct. R. § 3-1011(B). Thereafter, terms will be for 3 years.
 - c. Lay Members.** Lay members of the Commission shall be appointed by the Supreme Court. Initial terms will be staggered so one member serves for 1 year, one member serves for 2 years, and one member serves for 3 years. Thereafter, terms will be for 3 years. Neb. Ct. R. § 3-1011(A)(2) and (B).
 - d. Annual Nominations.** Each year, following its October meeting, the Executive Council of the NSBA shall submit to the Supreme Court a nomination for appointment to each expiring term. Neb. Ct. R. § 3-1011(A)(1).
 - e. Consecutive Terms.** Members may be appointed for, and serve, consecutive terms.
- III. Officers.**
 - a. Chairperson.** The Chief Justice of the Supreme Court shall annually designate a chairperson from among the Commission members. Neb. Ct. R. § 3-1011(C).
 - b. Vice Chairperson and Other Officers.** The Commission shall elect a vice chairperson each year, and such other officers as it may deem necessary to carry out the purposes of the Commission. Neb. Ct. R. § 3-1011(E).

- c. **Secretary.** The Secretary of the Commission shall be the custodian of all records of the Commission and shall keep minutes of all meetings held by the Commission, or its designated committees or panels. All such records and minutes shall be kept at the offices of the NSBA. Neb. Ct. R. § 3-1012(E).

IV. Meetings. The Commission shall meet as necessary to complete its business, as determined by the Commission, but not less than once per year, or upon call of the chairperson. Neb. Ct. R. § 3-1011(E).

- a. **Notice of Meetings.** Notice of meetings shall be sent at least 3 business days prior to the date of the meeting and shall include notice as to the date, time, and place of the meeting along with a preliminary agenda for the meeting. Meeting notices may be sent electronically, by e-mail or facsimile. Emergency meetings may be held without the required 3-day notice if all members approve and waive the notice requirement.
- b. **Quorum.** A majority of the Members shall constitute a quorum. If less than a quorum is present at a meeting, a majority of the Members present may adjourn the meeting and continue it to a later date and time upon notice. At any reconvened meeting at which a quorum is present, any business may be transacted which might have been transacted at the adjourned meeting. Members present at a properly called meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum. Neb. Ct. R. § 3-1011(F).
- c. **Voting.** Each Member shall be entitled to one vote on each matter submitted to a vote at a meeting of the Commission. A majority vote of the Members present at a meeting at which a quorum exists shall, unless a greater vote is required by other provisions of these regulations, decide any issue submitted.
- d. **Action by Communication Equipment.** The Members or any designated committee may participate in a meeting of the Commission or such designated committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time, and participation by such means will constitute presence in person at a meeting.
- e. **Action Without Meeting.** Any action required or permitted to be taken at a Commission meeting may be taken without a meeting if a written consent setting forth the action taken or to be taken is signed by each of the Members. Any such written consent (including facsimile and digital signatures) shall be inserted in the minute book as if it were the minutes of a Commission meeting. Further, such consent shall have the same force and effect as a unanimous vote and may be stated as such in any document filed for the public record.

V. Committees or Panels. The Commission may establish committees or three-member panels as the Commission deems necessary and appropriate, with each committee or panel having a specified function determined by the Commission and having the full jurisdiction and authority of the Commission, Neb. Ct. R. § 3-1011(F), except that:

- a. No advisory opinion may be issued without the approval of the Commission;

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- b. No determination of the unauthorized practice of law by a respondent and referral of a matter to a law enforcement or other agency may be made without the approval of the Commission; and
- c. The action of a designated committee or panel on any matter shall be subject to review and approval or disapproval by the entire Commission. The Commission chairperson shall appoint a chairperson for each designated committee or panel to serve for a 1-year term.

VI. Administration of Commission.

a. Counsel on Unauthorized Practice of Law. Neb. Ct. R. § 3-1013.

- i. The Counsel on Unauthorized Practice of Law (CUPL) will be hired by the Executive Director of the NSBA and shall be an employee of the NSBA. The NSBA shall provide to the CUPL any such additional staff support as designated by the Executive Director. Neb. Ct. R. § 3-1013(B).
- ii. The CUPL shall not be entitled to a vote on Commission matters.
- iii. The CUPL shall be responsible for the duties prescribed in the Court Rules, Neb. Ct. R. § 3-1013, and other duties as assigned by the Supreme Court, Commission, or Executive Director of the NSBA.
- iv. The CUPL shall send out notices of meetings of the Commission and prepare the preliminary agenda for each meeting.

- b. **Budget.** The Executive Director of the NSBA and the CUPL, with the input of the Commission, shall prepare an annual budget for the performance of the Commission's activities. The Commission's budget will be part of the full NSBA budget and will be subject to the same process for approval. NSBA shall pay all expenses reasonably and necessarily incurred by the Commission pursuant to the budget and the expense policy of the NSBA. Members of the Commission shall be entitled to reimbursement for reasonable expenses incurred in the performance of their official duties.
- c. **Letterhead.** Use of Commission letterhead shall be limited to official business of the Commission and specifically shall not be used in connection with any political campaign or to support or oppose any public issue, or for personal or charitable purposes.

VII. Conflict of Interest.

- a. **In General.** A Member who has or has had a lawyer/client relationship or financial relationship with, or who is an immediate family member of, a person or entity who is a complainant or the subject of a matter before the Commission shall not participate in the investigation or deliberation on any matter involving that complainant, person, or entity.
- b. **Disclosure.** A Member with a past or present relationship, other than that as provided in section VII.a. above, with a person or entity who is the complainant or subject of a matter before the Commission, shall disclose such relationship to the Commission, and if the

Commission deems it appropriate, that Member shall not participate in any action relating to that matter.

VIII. Advisory Opinions.

- a. **Requests for Advisory Opinions.** Any person may request an advisory opinion from the Commission relating to the authority of a nonlawyer to perform legal and law-related services. Such requests shall be in writing in a form and manner prescribed by the Commission and signed by the person requesting the opinion. Neb. Ct. R. § 3-1012(D).
- b. **Commission Initiated Advisory Opinions.** The Commission may render advisory opinions relating to the authority of nonlawyers to perform legal and law-related services in connection with the consideration of any complaint or in any investigation made on its own initiative relating to the unauthorized practice of law by any person or entity.
- c. **Notice of Request.** The Commission may give notice to any person or entity, either personally or by publication, of any pending request for an advisory opinion or pending Commission-initiated advisory opinion, and invite written comments regarding the pending advisory opinion.
- d. **Pending Controversy.** The Commission may not render an advisory opinion in any matter that, to its knowledge, is the subject of or might affect a case or controversy pending in any court or administrative proceeding, including an attorney disciplinary proceeding.
- e. **Public Hearing.** The Commission may conduct a public hearing at a date and time and in a manner set by the Commission, designed to make it accessible to interested parties as determined by the Commission, on any request for an advisory opinion or a Commission-initiated advisory opinion.
- f. **Commission Action.** Upon receipt of a proper request for an advisory opinion, the Commission may issue an advisory opinion or proposed advisory opinion, or may decline to issue an advisory opinion. If the Commission issues an advisory opinion, it shall be in writing and shall be transmitted to the person making the request, or in the case of a Commission initiated advisory opinion, it may be transmitted to any person(s) determined by the Commission for whose benefit or detriment the advisory opinion was issued.
- g. **Publication of Advisory Opinions.** The Commission may arrange for the publication of advisory opinions in the Nebraska Lawyer magazine, on the NSBA Web site, or elsewhere as it deems appropriate. Opinions so published shall not, insofar as practicable, identify the party or parties making the inquiry, the complainant, or the respondent.

IX. Complaints.

- a. **Receiving Complaints.** Complaints alleging the unauthorized practice of law shall be submitted in writing to the Commission, by filing with the CUPL, in a form and manner substantially similar to, and containing the information requested by, the Complaint Form (Appendix A) as approved by the Commission. Neb. Ct. R. § 3-1014(A).

- b. **Commission Initiative.** The Commission may, on its own initiative and without any complaint being made to it, investigate any condition, situation or activity involving unauthorized practice of law of which it becomes aware, in the same manner as if a complaint had been made under section IX.a. above. Neb. Ct. R. § 3-1012(A).
 - c. **Initial Screening of Complaints.** Upon receipt of a complaint, or Commission initiative, the CUPL shall conduct an initial screening to determine whether it is within the jurisdiction of the Commission. The complainant may at any time during the initial screening submit additional information. If not within the jurisdiction of the Commission, the CUPL shall advise the complainant that a recommendation shall be made to the Commission that the matter should not be opened as a complaint for investigation, and the reasons for such. Neb. Ct. R. §§ 3-1013(C) and 3-1014(A).
 - d. **Commission Review of Initial Screening.** All matters screened by the CUPL will be placed on the next Commission agenda for review and any action deemed appropriate by the Commission. If the Commission adopts the recommendation of the CUPL that no investigation be opened, the complainant shall be so advised. If the complaint is deemed to be within the jurisdiction of the Commission, and not subject to deferral, the complaint will be opened for investigation. Neb. Ct. R. § 3-1013(C).
 - e. **Request for Response.** After the Commission decides that a complaint should be investigated, the respondent may be notified of such investigation and sent a copy of the complaint with a request to respond within 20 days. If the respondent does not respond within 20 days, the Commission may consider the complaint on its face and proceed with the investigation.
- X. **Investigation.** The complainant and the respondent may be interviewed, and such other and further review or investigation may be conducted as is deemed appropriate. The complainant may submit additional information. During the course of the investigation, the CUPL and/or the Commission may use its power, as provided in the Court Rules, to subpoena witnesses, compel production of documentary evidence, swear witnesses, take testimony, and cause transcripts to be made. Neb. Ct. R. § 3-1014(B) through (D).
- a. **Methods of Investigation.** The CUPL may use such methods and means of conducting the investigation as the Commission shall deem appropriate, including written correspondence, electronic correspondence, telephone calls, teleconferences, personal meetings, consultation with law enforcement and government officials, hiring outside investigators, online research, other legal organizations, and any other NSBA resources. All communications shall strictly comply with the Court Rules regarding confidentiality. Neb. Ct. R. § 3-1020(C) through (G).
 - b. **Voluntary Resolution.** The respondent, at any time during the process of investigation, may voluntarily consent to enter into a written agreement to refrain in the future from the conduct which is the subject of the complaint and the investigation. Such written consent agreement shall be prepared by the CUPL and may include a stipulation as to penalties in the event of continued conduct which is the subject of the complaint, investigation, and agreement. Any such consent agreement shall be submitted to the Commission at its next meeting and shall not be final until approved by the Commission and executed by the

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chairperson. Once executed by the chairperson and the respondent, the complainant will be notified in writing by the CUPL and the file will be closed. Neb. Ct. R. § 3-1014(F).

- c. Commission Review After Investigation.** After investigation, a written report and recommendation will be submitted by the CUPL to the Commission. The Commission may take the following actions:
- i.** Request that the CUPL do further investigation, Neb. Ct. R. § 3-1014(G);
 - ii.** Conclude that there has been no unauthorized practice of law and that the complaint should be dismissed, in which case the CUPL shall notify the complainant and the respondent in writing and shall close the file, Neb. Ct. R. § 3-1014(E); or
 - iii.** Conclude that the conduct does constitute unauthorized practice of law and proceed with remedies as provided under the Court Rules, Neb. Ct. R. § 3-1014(H).
- d. Pending Controversy.** Notwithstanding the foregoing, the Commission may defer an investigation in any matter that, to its knowledge, is the subject of or might affect a case or controversy pending in any court or administrative proceeding, including attorney discipline.

XI. Commission Action After Decision of Unauthorized Practice of Law. If the Commission concludes that the conduct does constitute unauthorized practice of law, the Commission shall proceed in the following manner:

- a.** The Commission shall notify the respondent of its conclusion. Neb. Ct. R. § 3-1014(E). The respondent will be encouraged to voluntarily resolve the matter as described above. Neb. Ct. R. § 3-1014(F).
- b.** If the respondent declines to enter into a written consent agreement, the Commission may attempt to arrive at any other satisfactory disposition as it may determine. In attempting to arrive at a satisfactory disposition, the Commission or the CUPL may conduct additional informal conferences with the respondent or such other means of resolution as it deems appropriate. The CUPL shall document all such attempts at resolution and report such in writing to the Commission.
- c.** If the respondent declines to enter into a written consent agreement, the Commission may take the following actions:
 - i.** Refer the matter to the appropriate law enforcement or other agency,
 - ii.** Commence civil injunction proceedings in the Supreme Court as provided for in the Court Rules, Neb. Ct. R. § 3-1015 to § 3-1018, or
 - iii.** Where the respondent has previously been enjoined by an order of the Supreme Court entered pursuant to Neb. Ct. R. § 3-1018(A), apply to the Supreme Court to commence contempt proceedings pursuant to Neb. Ct. R. § 3-1019.

XII. Annual Report. The Commission shall make an annual report to the Supreme Court due before April 1 of the year following operations. The report shall give information about the activities of the Commission, including the number of complaints received and investigated,

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the status of all pending complaints and investigations, and a financial report showing expenditures and comparison to the approved budget.

- XIII. Amendments.** These Administrative Rules, Regulations, and Procedures may be amended at any meeting of the Commission by a vote of two-thirds of the voting members present, provided that no amendment shall be considered (except by unanimous consent of the voting members present) unless a written or printed copy of the proposed amendment or amendments shall have been included in the notice of the meeting. Any such amendment approved by the Commission shall be subject to the approval of the Supreme Court in accordance with the Court Rules. Neb. Ct. R. § 3-1011(G).

APPENDIX A (COMPLAINT FORM)

NEBRASKA COMMISSION ON UNAUTHORIZED PRACTICE OF LAW

635 SOUTH 14TH STREET

COMPLAINT FORM

PO Box 81809

LINCOLN, NE 68501-81809

DATE

Please give us information so we can contact you.	Who do you believe has engaged in the Unauthorized Practice of Law?
Name _____	Name _____
Address _____	Address _____
City, State Zip _____	City, State Zip _____
Home Phone _____	Home Phone _____
Cell Phone _____	Cell Phone _____
Other Phone _____	Other Phone _____
Email _____	Email _____

What did the person do? What is your specific complaint?

Be specific. Give actual dates and full addresses of all places that are important to your complaint. Tell what kind of contact you had with the person, whether it was a telephone call, personal meeting, e-mails, letters, or something else. Attach copies of any papers, letters, receipts, checks, contracts, advertisements, or anything else that applies to this complaint. Attach more pages if there is not enough space here.

Is the person still doing the same thing that you are complaining about?

Yes _____

No _____

I do not know

If you answered **Yes**, please tell us how you know? Tell us about other people or other things that have occurred that show the person is still doing the same things you are complaining about. Attach more pages if there is not enough space here.

Did you pay money to this person for some services?

Yes _____ No _____

How much money did you pay?

\$ _____

How did you pay the money?

Cash _____

Check _____

Credit Card _____

Other _____

What kind of services did you receive?

Tell us everything you can about what things the person did for you and what the person did not do for you. What did you really want the person to do? Did you get what you wanted? Did you have any problems with the services at any time? Do you still have problems because of the services? Attach more pages if there is not enough space here.

Have you filed complaints or a lawsuit about this person and this matter with anyone else?

Yes _____

If you answered **Yes**, tell us who you contacted. If you hired a lawyer about this matter, please give us the name, address, telephone, and e-mail of your lawyer. Tell us about what they have told you and what they have done. Attach more pages if there is not enough space here.

No _____

Do you know of anyone else that knows about this situation?

Name

Address

Telephone

IMPORTANT: PLEASE READ CAREFULLY BEFORE SIGNING

The information given in this complaint form is true and correct to the best of my knowledge and belief. I understand it may be used in legal proceedings.

Date

Signature

Do not write in this area.